IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11102 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAVITABEN WIFE OF VIPULKUMAR RAMANLAL PARMAR (DETENU)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11102 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/05/2003

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Patel for the detenu and

Ms. Nandini Joshi, AGP for the State. Affidavit-in-reply tendered today by Ms. Joshi is taken on record.

2. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 17.9.2002 passed against him by the Commissioner of Police, Vadodara City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu was branded as "bootlegger" within the meaning of section 2(b) of the Act.

3. The petitioner-detenu has challenged the legality and validity of the impugned order of detention on number of grounds. However, ld. counsel Mr. Patel for the detenu has mainly concentrated his arguments on two grounds. Firstly, he has submitted that the co-detenu of the present detenu has been set at liberty by this Court while dealing with Spl.C.A.No.9778/2002 and vide oral judgment dated 8.5.2003, impugned order of detention passed against the co-detenu came to be quashed and set aside. So, on the ground of parity, ld. counsel Mr. Patel has submitted that the present detenu should also be set at liberty. The next contention raised by ld. counsel Mr. Patel is that when the impugned order of detention came to be executed on the detenu, he was in judicial custody and bail application preferred by him was pending. Hence, there was no need to pass formal order of detention as he was in judicial custody and so in view of the ratio of the decision reported in AIR 2000 SC 3675 and hence impugned order of detention requires to be quashed and set aside.

4. In view of the facts and circumstances above and settled legal position, I am inclined to allow this petition by quashing and setting aside the impugned order of detention.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.9.2002 passed by the Commissioner of Police, Vadodara City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

8-05-2003 [C. K.BUCH, J]
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